

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 735 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DISTRICT PANCHAYAT & 1

Versus

RAMESHCHANDRA J DOBARIYA

Appearance:

MR PV HATHI for Petitioners

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/11/98

ORAL JUDGEMENT

Heard the learned counsel for the petitioners.

2. On 2-6-1987, notification under section 4 of the Land Acquisition Act, 1894 was published for acquisition of land of Bhavan Khimji, Jeram Ranchhod and Mulji Khimji admeasuring 22 Ares and 56 sq. mts. by the State Government for District Panchayat, Jamnagar for the public purpose of construction of Lothiya-Bavariya Road.

Notification under section 6 of the said Act was published on 7-7-1988. In the month of January, 1990, award under section 11 of the said Act was passed in respect of the suit land. The possession of this land was handed over to the District Panchayat as per Rojkam, mark 12/6. None of the person aforesaid has challenged the said acquisition either before the civil court or in this court.

3. Learned counsel for the petitioners submitted that the holders of the land have also accepted the amount of compensation awarded to them for the acquisition of their lands.

4. On 18-11-1992, three holders named above, filed a civil suit against the petitioners with a prayer to restrain them from taking their land for construction of road from Survey No.39. Along with the suit, application Ex.5 was filed for grant of temporary injunction. On 4-3-1994, learned trial court has passed the order on the application aforesaid and has declined to grant temporary injunction as prayed for by the plaintiff in the suit. Learned trial court has recorded a finding that in view of the provisions of section 47 (A) of the Act, 1894, no such interim relief can be granted.

5. Within few days, another suit came to be filed being civil suit No.595/92 by Rameshchandra Jerambhai Dobariya, son of plaintiff No.2 in the earlier civil suit No.591/92 in which he prayed for same relief as prayed by his father and two other persons in the earlier suit. Along with this suit, he filed an application Ex.5 for grant of temporary injunction. This application came to be rejected by the trial court on 27-11-1992. Against this order, the plaintiff-respondent filed Civil Misc. Appeal in the court of District Judge at Jamnagar. This appeal came to be decided by Joint District Judge, Jamnagar on 15-4-1994 and temporary injunction has been granted against the defendants-petitioners restraining them from taking over the possession of the disputed land bearing Survey No.39 admeasuring Ares 3 and 35 sq. mts. till the disposal of the suit. Hence this revision application before this Court.

6. It is not in dispute that the land in dispute has been acquired by the State Government for District Panchayat for the public purpose of construction of the road. It is also not in dispute that the holders of the land, as per revenue record, have been paid the compensation for acquisition of their lands. Above that, the holders of the land have also filed civil suit, in

which the civil court has declined to grant any injunction and that matter has not been taken up further in appeal. Now the second suit has been filed by none other than the son of one of the plaintiffs in the earlier suit for the same relief. Contention has been made in the present case by the plaintiff-respondent that the land in dispute has not been acquired by following procedure under the Land Acquisition Act and as such the defendants-petitioners cannot take the possession thereof. Other grievance has been made that notices under section 4, 6 and 9 have not been issued in the name of plaintiff-respondent and so the civil court has jurisdiction to entertain the suit. These grounds taken found favour with the learned first appellate court and accordingly it has granted temporary injunction restraining the defendants-petitioners from taking possession of the suit land.

7. The whole approach of the learned first appellate court is perverse. The land on its acquisition vested in the State Government free from all encumbrances. The holders of the land as well as the persons who have any interest therein have divested all of their right, title, and interest therein. Even if it is taken for the sake of argument that notices under section 4 or 6 were not personally delivered to the plaintiff-respondent still on this ground no injunction could have been granted by the learned first appellate court in the present case. The father of the plaintiff-respondent has admittedly received the notices of section 4 and 6 of the Act, 1894 as well as under section 9 of the said act. It is a case where first the father has made an attempt to frustrate this public cause for which the land has been acquired by filing civil suit in the court but he could not get the injunction. At the same time, another front has been opened by filing the suit by the present plaintiff-respondent for same prayer and cause of action and the learned trial court has not granted any temporary injunction. From the record of this case and particularly the Rojkam I find that the possession of this land has been delivered to the defendants-petitioners. In view of this fact, no temporary injunction could have been granted. Moreover, the civil court prima-facie has no jurisdiction to go on and examine the validity of the acquisition.

8. Otherwise also, even if it is taken that some prima-face case is made out by the plaintiff-respondent, in the presence of the fact that the land has been acquired and vested with the State Government free from all encumbrances, and acquired for the public purpose of

construction of road and the possession has also been delivered to the defendants-petitioners, it cannot be said that in case the interim relief prayed for by the plaintiff-respondent is not granted by the court it will cause any irreparable injury which cannot be compensated in terms of money. Learned first appellate court has to consider the corresponding injury likely to be caused to the general public because of grant of this interim injunction. The public will be deprived of the facility of road and this is a public cause, for which the defendants-petitioners want to construct the road. In such matter, irrespective of the fact whether same plausible case is made out by the plaintiff-respondent the other ingredients which are necessary to be established for grant of temporary injunction are difficult to be taken in favour of the plaintiff-respondent in this case. Balance of convenience also cannot be said to be favouring for grant of temporary injunction in favour of the plaintiff-respondent. It is no more *res-intergra* that only where the Court is satisfied that the party praying for temporary injunction has a strong *prima-facie* case, in case temporary injunction is not granted it will cause irreparable injury, which cannot be compensated in terms of money to him and lastly balance of convenience also favours for grant of injunction, temporary injunction can be granted but not otherwise. On all these three ingredients, the Court has to satisfy itself and only thereafter temporary injunction could have been granted. In this case for the reasons aforesaid, two other ingredients which are necessary to be satisfied to the Court and accepted by it does not exist at all in the present case.

9. Grant of such a temporary injunction on the contrary will result in causing injury to the general public. Be that as it may. Otherwise also, this Court has stayed this order of the learned first appellate court and there is all possibility that by now the road would have been constructed. So taking into consideration the totality of the facts of this case, I am satisfied that in this case, learned first appellate court has committed serious material irregularity in exercise of its jurisdiction in passing of the impugned order and this case clearly falls under clause (c) of subsection (1) of section 115, C.P.C.. It is also clearly borne out from the facts of this case that in case the impugned order is allowed to stand it will occasion failure of justice and will cause injury to the public at large.

10. In the result, this revision application succeeds and the same is allowed. The order dated 15-4-1994 of Joint District Judge, Jamnagar in Civil Misc. Appeal No.111/92 is quashed and set aside. Rule made absolute. No order as to costs.

zgs/-